IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13693 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ISHWARBHAI H PATEL

Versus

THE PRINCIPAL

Appearance:

MR L.B.Dabhi for Mr. HM PARIKH for the Petitioner.

DS AFF.NOT FILED (N) for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2-4-absent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25/07/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to calculate the pension of the petitioner on the basis that his last pay was Rs.775/- and not Rs.725/- per month and to pay gratuity

to the petitioner on the basis of 40 years' service and the respondents be directed not to recover the amount of Rs.7986/- from the amount of gratuity.

2. The petitioner joined BBCI Railway from 12th December 1944 to 9th July, 1948. Thereafter, the petitioner resigned and joined services on 4th Decemebr 1948 in the Collector office, Kheda as a Rationing Inspector. He served there till 24th February, 1954. Thereafter the petitioner rendered his service from 25th February, 1954 to 21st June, 1954 in the office of District Education Officer, Nadiad. After one day break in service, the petitioner served as a clerk from 23rd June, 1954 to 15.11.1954 in the office of Sub-Registrar, Kheda. The petitioner was trasnsferred to the office of the District Education Officer, Nadiad where he rendered his service from 16.6.1954 to 14th June, 1961 and from 15th June, 1961 the petitioner is working in the respondent no.1 school at Nadiad. There was a break in service from 11.7.48 to 3.12.1948 and on 2.6.1954 only for one day. On the application of the petitioner, the Director of Education condoned the break in service by an order dated 24th November, 1972. During the service period of the petitioner with the respondent no.1 school, the recommendations of Sarela Pay Commission came into force and the petitioner's pay was to be fixed as per the recommendations of Sarela Pay Commission. Hence, the petitioner filed Application no. 139 of 1975 before the Tribunal constituted under Gujarat Secondary Education Act, 1972. The said application was decided on 2.9.1975 and the Tribunal has allowed the application holding that the petitioner was entitled to be placed in the revised pay scale of Rs.250-12-310-EB-15-400-20-420. The order of the Tribunal was complied with and the pay scale of the petitioner was revised accordingly and his pay was fixed at Rs.298/- as on 1.12.1969. Thereafter, the Desai Pay Commission came into existence and the petitioner's pay was accordingly fixed as per the recommendations of the Desai Pay Commission. At the time of retirement, the pay of the petitioner was Rs.775/-. The petitioner superannuated on 31st May, 1984. After the retirement of the petitioner, the papers were sent to the respondent no.2 and those papers were sent to the respondent no.3 by the respondent no. 2. The respondent no. 3 raised some queries vide letter dated 29th February 1985 and the respondent no.3 sent a letter to the respondent no.2 dated 31st January, 1986. On 29th April, 1986 the respondent sent a letter condoning service break as well as the amount of recovery which was pertaining to grant and not pertaining to the pay of the petitioner. The petitioner also sent a reply dated 20th November, 1990 in

detail to the respondent no. 3 stating therein that the break in service was condoned by the Director of Education, now known as Director of Higher Education, Gujarat State, Gandhinagar vide his letter dated 24th November, 1972. The pay of the petitioner is required to be calculated and finalised accordingly. The petitioner received a letter dated 11th October, 1991 whereby pension and gratuity of the petitioner has been sanctioned and calculated on the basis of the pay scale at Rs.725/- in place of Rs.775/- and an amount of Rs.7986/- has been directed to be deducted from the amount of gratuity. The action on the part of the respondents in not paying the pension at the rate of Rs.775/- per month and deducting the amount of Rs.7986/from the amount of gratuity is arbitrary and violative of Article 14 of the Constitution of India. The petitioner was receiving the salary at the pay of Rs.775/- per month till his retirement.

3. The amount of higher pay scale has been directed to be deducted from the grant of the school and hence that cannot be deducted again. From the circular mentioned in the letter, it is clear that the pay which was received by the petitioner as his last pay should be calculated as the basis for granting pension and the petitioner was drawing the basic pay of Rs.775/- per month. Thus, the respondents have committed an error in calculating the pension at the rate of Rs.725/- per month.

4. So far as the deduction of amount from the amount of gratuity is concerned, the action of the respondents is arbitrary and the pay which was not paid by the respondents to the petitioner, the department was giving grant to the school and from that amount the petitioner was paid the salary. The department has already deducted the amount from the grant. Hence, the department cannot take the amount twice on the same head. The respondents have also committed an error in calculating 30 years' qualifying service of the petitioner. The department has already condoned the break. Therefore, the petitioner has 40 years' qualifying service for the purpose of calculation of pension. Hence, this petition has been filed for a direction to the respondents to calculate pension on the basis of the petitioner's pay at Rs.775/- and the amount of gratuity be paid on the basis of qualifying service of the petitioner i.e. 40 years and not 30 years.

5. Heard the learned counsel for the petitioner and perused the relevant papers on record. It

appears that the petitioner has made a representation dated 20th November, 1990 wherein he has claimed that the competent authority i.e. the Director of Education has already condoned break in service and the earlier period of service will be treated as qualifying service for the purpose of calculation of the pension. The Government Resolution dated 21st December, 1991 says that the pensionary pay means and includes pay in the prescribed scale of pay. As such, the last pay of the petitioner at the rate of Rs.775/- per month in the prescribed scale of Rs.425-800 is required to be taken into account for working out the average pay of last 10 months. The audit of recovery pointed out by the Junior Assistant Examiner is for the purpose of grant which has already been recovered from the school, while paying the grant. Hence, no recovery is required tobe made from the pension or gratuity of the petitioner. The petitioner requested in his representation to finalise his case in the right manner by taking into consideration the explanation given by the petitioner to avoid hardship. It appears that the Accounts Officer, (Pension), Vigilance unit, Nadiad and Director of Pension and Provident fund, Ahmedabad has not considered and has not passed an appropriate order on the representation of the petitioner.

6. In the facts and circumstances of the case, this petition is therefore, being disposed of finally with a direction that the petitioner is at liberty to file a fresh representation before respondent no.3 and/or Accounts Officer (Pension), Vigilance Unit, Nadiad and Director of Pension and Provident Fund, Lala Kaka Estate, Khanpur, Ahmedabad within three weeks from today alongwith a copy of this judgment and on such representation being made, the respondent no. 3 and/or Accounts Officer will consider [the case of the petitioner regarding pension as well as gratuity after taking into account 40 years' qualifying service of the petitioner and decide the same in accordance with law at the earliest and as far as possible within a period of three months from the date of its receipt. In case, any adverse order is passed, the concerned authority will supply a copy of the order to the petitioner by Registered Post A.D. within a week from the date of the order and the petitioner would be at liberty to file a fresh petition in this Court, if he is so advised. Rule is discharged with no order as to costs.

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